PROCEEDS FROM U.S. BONDS MATURING DURING INCOMPETENCY OF CO-OWNER HELD TO GO TO RESIDUARY ESTATE

In Re Sachs
173 Ohio St. 270, 181 N.E.2d 464 (1962)

Mrs. Sachs was declared mentally incompetent on August 6, 1954. She was the co-owner of United States savings bonds which she had purchased at various times prior to that date, and placed in her safe deposit box. James Goodwin was registered as the other co-owner of the bonds. Some of the bonds matured during her lifetime, but after she became incompetent. Her guardians cashed most of these bonds and deposited the proceeds in the guardianship savings accounts.[1] She did not make a specific bequest of the bonds in her will. After her death, the guardians paid the proceeds of the previously matured bonds to the executors of her estate, but delivered the unmatured bonds which were held by them at the time of her death to Goodwin, the co-owner, as the survivor. Goodwin, who had furnished none of the purchase price and to whom delivery was never made, filed exceptions to four accounts submitted by the guardians. The probate court overruled the exceptions, and the court of appeals and the Ohio Supreme Court affirmed.[2] The supreme court held that no part of the proceeds of the matured bonds vested in the co-owner upon the death of the ward. Rather, the proceeds became part of Mrs. Sachs' residuary estate to be distributed in accordance with her will.[3]

The form of registration of United States savings bonds is restricted to (1) A as the sole owner; (2) A or B as co-owners; or (3) A as owner, payable on A's death to B.[4] Payment of bonds registered in the name of a sole owner will be made to the registered owner and upon his death to the person established as owner by testamentary proceedings.[5] The proceeds from bonds registered in the co-owner form will be paid to either co-owner who presents the bond.[6] Survivorship bond payment will be made to the registered owner during his lifetime and to the beneficiary upon proof of the owner's death.[7] The treasury regulations provide that the registration of

---

[1] Ohio Rev. Code § 2109.42 (1953) provides:

> A fiduciary who has funds belonging to a trust which are not required for current expenditures shall, unless otherwise ordered by the probate court, invest or deposit such funds within a reasonable time according to Section 2109.37 of the Revised Code.

Ohio Rev. Code § 2109.37 lists approved investments for trust funds.

[2] In Re Sachs, 173 Ohio St. 270, 181 N.E.2d 464 (1962).

[3] The supreme court further stated that if the guardians had been negligent in not cashing the matured bonds they would have been liable for the loss of interest.

[4] 31 C.F.R. § 315.7 (1959). See Comment, 7 Kan. L. Rev. 512 (1959).

[5] 31 C.F.R. § 315.55 (1959).

[6] 31 C.F.R. § 315.60 (1959).

[7] 31 C.F.R. § 315.65(a) (1959).

the bonds is conclusive of ownership.[8] In either the co-owner or the beneficiary situation, if A dies without surrendering the bonds, B will be the owner.[9]

Disanto's Estate[10] held that the regulations of the Treasury Department control the ownership of savings bonds. The exceptor in the principal case contended that Mrs. Sachs, while competent, made a contract with the United States government for the primary benefit of the exceptor, a third party, who thereby acquired a definite right, title and interest in the matured bonds as co-owner. The court rejected this argument stating that the matured bonds did not pass to the co-owner as a gift inter vivos or causa mortis because Mrs. Sachs had never given him possession of the bonds, or control over them. The court in effect held that the right to the bonds did not vest in him as third-party beneficiary because by the terms of the contract it terminated prior to her death. The court also found that Mrs. Sachs knew the contract would mature in twelve years, at which time the bonds would no longer produce income. Therefore, the only reasonable inference to be drawn from these facts is that had Mrs. Sachs remained competent, she would have redeemed the bonds at maturity. This inference does not necessarily arise when the bonds are specifically bequeathed by will, or when the deceased's intent is evidenced by a form of ownership providing for survivorship. The guardian is the mere conservator of his ward's property, and as such he has no power to change the ward's estate after death or mental incompetency, when the testator is powerless to act himself.[11]

Although *Sachs* is a case of first impression in Ohio, an Illinois decision, *In Re Estate of Hirsh*, is factually similar.[12] In *Hirsh*, however, part of the bonds had matured before the appointment of a guardian, but had not been redeemed by the ward although she was competent to do so. The guardian of the ward's estate cashed the bonds and reinvested the proceeds.[13] The court held that the rights of the parties were fixed as of the time the deceased became incompetent and therefore the co-owner became entitled to the proceeds from the bonds upon death of the deceased. The court in *Hirsh* determined that the controlling question was whether Mrs. Hirsh intended to give the bonds to the co-owner at the time that she became incompetent. An affirmative intention was found to exist from the failure of Mrs. Hirsh to redeem the bonds after maturity and from her specific mention of the bonds in her will where she stated that she had provided for certain friends by purchasing government bonds for them. *Hirsh* is distinguishable on its facts from *Sachs*, in which the bonds had not matured until after the purchaser had been declared incompetent, and in which the will made no mention of the bonds.

---

8 31 C.F.R. § 315.5 (1959).

9 31 C.F.R. § 315.61 (1959).

10 142 Ohio St. 223, 51 N.E.2d 639 (1943).

11 Zuber v. Zuber, 93 Ohio App. 195, 112 N.E.2d 688 (1952).

12 In Re Estate of Hirsh, 27 Ill. App. 2d 228, 169 N.E.2d 591 (1960).

13 Ill. Rev. Stat. ch. 3, § 412 (1959) requires conservators to keep their ward's property invested.

In *Sachs* no question of ademption of legacies is involved because there was no bequest of the bonds in the will of Mrs. Sachs. However, if she had made a specific legacy of such bonds in her will to a named beneficiary, the problem of ademption would arise.

Ademption takes place where either (1) a specific thing bequeathed is not in existence at the testator's death; or (2) where a testator, in his lifetime, had made a gift or provision for the legatee as a substitute for the bequest and evidencing an intention to revoke or cancel the bequest.[14] The ademption in (1) occurs by the loss, destruction, consumption, or substantial change in the legacy or devise during the life of the testator so as to make it impossible to carry out the provisions in the will.[15]

Two different theories have been used by the courts in dealing with exchanged property to determine if an ademption of a specific legacy has occurred.[16] The Identity Theory states that if the identical subject matter of the legacy has been disposed of or destroyed so that it does not form a part of the testator's estate at the time of his death, the legacy is extinguished or adeemed, and the legatee's rights are gone, regardless of the testator's intention.[17] The Intention Theory holds that legacies are adeemed only when the testator apparently so intended.[18]

In dealing with the altering of an incompetent's property by a guardian, some courts have held that the guardian has no power to change the ward's estate and the devolution thereof in accordance with his will, except to make necessary provisions for the maintenance of the ward.[19] Ohio has recognized the principle that the guardian cannot modify the will of his ward in *Roderick v. Fisher*,[20] and *Bishop v. Fulmer*.[21] The *Sachs* decision, if applied to bonds included in testamentary bequests, would have the effect not only of

[14] 56 O. Jur. 2d *Wills* § 873 (1963).

[15] Annot., 51 A.L.R.2d 770 (1957).

[16] Roderick v. Fisher, 97 Ohio App. 95, 122 N.E.2d 475 (1954).

[17] 28 R.C.L. 345, § 341 (1921).

[18] Wilmerton v. Wilmerton, 176 F. 896, 900 (7th Cir. 1910).

[19] *Supra* note 15, at 774.

[20] Roderick v. Fisher, *supra* note 16, held that the Intention Theory would apply to a case where a guardian is appointed for a person of unsound mind to prevent an ademption by concluding that the intention of the testator expressed in his will should be preserved, and a sale by the guardian should not operate to change the will or the effect of the disposition as it existed at the time of its execution. In *Fisher*, however, the testator was merely physically incompetent and could express his intention up until his death in the same manner as a normal person. For this reason the court found that an ademption had occurred for the testator was presumed to know the full legal effect of the sale of property which had been specifically devised in his will.

[21] 112 Ohio App. 140, 175 N.E.2d 209 (1960). The testator made a devise of real property in his will, then was later adjudged a mentally incompetent person and placed under a guardian. Prior to the testator's death the guardian sold the property, but the court held that the sale of the property did not operate as an ademption if the testator remained mentally incompetent and lacked testamentary capacity to make a new will at the time of the sale and continuing until his death. Since there was no ademption the original legatee received the proceeds of the sale.

permitting, but requiring guardians to modify the disposition of the ward's estate as expressed, during his competency, by his will. This would occur when a guardian cashes matured bonds given in a specific bequest, as required by statute.[22] If *Sachs* should be applied in this situation, the residuary legatees would be entitled to the proceeds of the bonds.

The court in *Sachs* clearly limited its decision to the particular facts of the case, but it may be argued that it should be applied to cases in which a testator has made a specific bequest of a bond in his will. Such an application of *Sachs* would result in an extension of guardianship powers by allowing a guardian to defeat the will of a ward by the redemption of savings bonds that were specifically bequeathed. It appears from the previously decided Ohio cases that *Sachs*, while correctly decided, should not be extended to situations where a specific bequest of savings bonds had been previously made by a ward. In such a case, while the guardian could cash the bonds and reinvest the proceeds, such proceeds plus any accrued interest thereon remaining after the death of the testator should go to the legatee.[23]

---

[22] Ohio Rev. Code § 2109.42 (1953), *supra* note 1.

[23] In Re Estate of Hirsh, *supra* note 12, at 595.